

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 DOCK McNEELY,

4 Nos. C 12-1483 CW (PR)
C 12-2599 CW (PR)

5 Petitioner,

6 v. ORDER DENYING RECONSIDERATION;
7 KEVIN CHAPPELL, Warden, DISMISSING C 12-2599 CW (PR)
8 Respondent. AS DUPLICATIVE; TERMINATING
ALL PENDING MOTIONS

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10 On March 23, 2012, Petitioner, a state prisoner incarcerated
11 at San Quentin State Prison, filed McNeely v. Chappell, C 12-1483
12 CW (PR), a pro se petition for a writ of habeas corpus brought
13 pursuant to 28 U.S.C. § 2241, challenging the validity of his
14 confinement. On April 9, 2012, the Court reviewed the petition and
15 ordered the matter transferred to the United States District Court
16 for the Eastern District of California, finding as follows:

17 In 2000, Petitioner sought habeas corpus relief in
18 the United States District Court for the Eastern District
19 of California, challenging the constitutional validity of
20 his five-year pretrial detention on criminal charges
21 filed in Sacramento County Superior Court. The Eastern
22 District denied relief, but the Ninth Circuit Court of
Appeals found that Petitioner had been denied his
constitutional right to a speedy trial, reversed the
district court and ordered Petitioner's immediate release
from custody, with prejudice to re-prosecution of the
criminal charges. See McNeely v. Blanas, 336 F.3d 822,
832 (9th Cir. 2003).

23 In the instant petition, Petitioner appears to
24 allege that he was re-arrested by Sacramento police and
25 currently is imprisoned as a pretrial detainee on the
same criminal charges, in violation of the Ninth
Circuit's ruling.

26 A habeas petition by a state pretrial detainee
27 properly is brought under 28 U.S.C. § 2241. See Hoyle v.
Ada County, 501 F.3d 1053, 1058 (9th Cir. 2007). In a
28 state containing more than one federal district, the
petition may be filed in either the district of

1 confinement or the district of conviction. 28 U.S.C.
2 § 2241(d). Although each district has concurrent
3 jurisdiction to entertain the petition, the district
court for the district where the petition is filed "in
4 the exercise of its discretion and furtherance of justice
may transfer the application to the other district court
for hearing and determination." Id.

5 Here, Petitioner is confined within the venue of the
6 Northern District, but he is challenging the validity of
7 criminal charges filed against him in the Eastern
8 District. He maintains that those charges were filed in
9 violation of the Ninth Circuit's ruling granting relief
10 to Petitioner in his previous habeas action filed in the
11 Eastern District. Consequently, the Court finds that the
12 petition should be heard in the Eastern District.

13 Accordingly, pursuant to 28 U.S.C. § 1404(a), and in
14 the interest of justice, the Clerk of the Court is
15 ordered to TRANSFER this action forthwith to the United
16 States District Court for the Eastern District of
17 California.

18 Order at 1:14-2:20.

19 Petitioner has moved for reconsideration of the Court's order
20 transferring the petition, arguing the petition properly is brought
21 in the Northern District because he is not challenging the criminal
22 charges against him, but, rather, is challenging his physical
23 confinement.

24 The motion is DENIED. Petitioner states in the petition that
25 in 2008 he was arrested by the Sacramento County Sheriff's
26 Department based on erroneous information in the Department's
27 database that did not reflect accurately the disposition of his
28 prior criminal case. Although he does not explain the precise
grounds for his arrest and current incarceration, his request for
habeas relief is based on his contention that his confinement
violates the Ninth Circuit's ruling in his case in McNeely v.
Blanas, 336 F.3d 822 (9th Cir. 2003). As Petitioner has not
provided any information that indicates he is incarcerated because

1 of criminal charges brought, or a criminal conviction obtained, in
2 the Northern District, the Court will not reconsider its prior
3 ruling that the proper venue for this petition is the Eastern
4 District.

5 Petitioner recently filed another habeas petition, McNeely v.
6 Chappell, C 12-2599 CW (PR), which raises the same claims as the
7 petition in C 12-1483. Accordingly, that petition is hereby
8 DISMISSED as duplicative.

9 CONCLUSION

10 For the foregoing reasons, the Court orders as follows:

11 1. Petitioner's motion for reconsideration in McNeely v.
12 Chappell, C 12-1483 CW (PR) is DENIED.

13 2. The petition filed in McNeely v. Chappell, C 12-2599 CW
14 (PR) is DISMISSED as duplicative. The Clerk of the Court shall
15 enter judgment in that case and close the file.

16 3. The Clerk shall TERMINATE all pending motions in both
17 cases.

18 IT IS SO ORDERED.

19 Dated: 5/25/2012


20 CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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